

COUNTY ATTORNEY'S OFFICE
PERFORMANCE PLAN FY11

12/06/2011

Contribution to Montgomery Results

Accomplishments (2006-2011)

1. Positive ratio between plaintiff's demand and amount paid by the County, and win/loss ratio of cases litigated.
2. Positive gain over split in workers' compensation cases.
3. Debt collection (\$108.4 million since FY07) at a cost of below 3%
4. Position of HHS affirmed in child welfare TPR/CINA adjudicated cases (99% granted).
5. Positive outcome in appeals (prevailed in approximately 80% of cases).
6. Positive win/loss ratio of code enforcement cases litigated (over 95% won).
7. Customer satisfaction survey shows improvement in every category measured. OCA shows overall satisfaction above departmental averages.
8. Landmark matters: CE budget prerogative/IAFF, FOP, MCGEO; LiveNation; Republic Properties; speed cameras; IAD – summary punishment; *Montgomery County v. Butler*; *Shropshire v. Inspector General*; ambulance fee – government speech (*Bernard v. Montgomery County*); Project Civic Access; Curfew/Loitering opinions; Community Benefits Agreements opinion; Public Electric Co. opinion; Damage control from invalidation of carbon tax (*Mirant v. Montgomery County*); Bill 22-09, Notice of Violations/Board of Appeals jurisdiction; prevailed on maintenance of effort challenge filed by MCBOE filed with State Board of Education.

Future Initiatives (2010-2014)

1. Maintain standards established in categories 1-7, above.
2. Minimize reliance on outside counsel.
3. Reinstate publication of opinions.

4. Defend County effectively and fairly.
5. Provide objective, sound, and timely legal guidance that respect client's right to make policy decisions.

Office of the County Attorney At-A-Glance

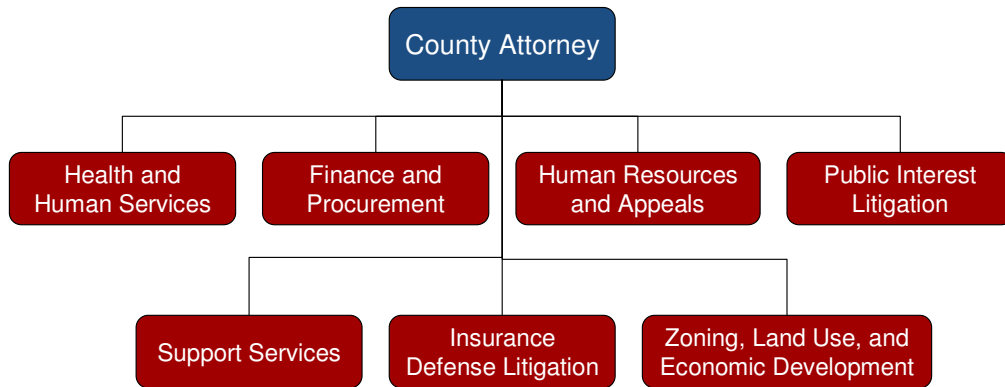
What OCA Does and for Whom	How Much*
<p><u>In General</u></p> <ul style="list-style-type: none"> ▪ The Office of the County Attorney enables County Government carry out its policies and operations in a manner that: <ul style="list-style-type: none"> – minimizes legal and economic risk; and – complies with applicable federal, state, and local regulation; and ▪ provides legal services to County Government, primarily litigation, that promote public safety, health, and welfare 	<ul style="list-style-type: none"> ▪ 67.2 WY ▪ \$8.77M budget
<p><u>Transactional Support</u></p> <ul style="list-style-type: none"> ▪ Procurement Contracts -- DGS ▪ Memoranda of Understanding and Agreements – All Departments ▪ Real Estate Transactions and Condemnations – DOT, DGS, DHCA, DED, CEX 	<ul style="list-style-type: none"> ▪ 7.0 WY ▪ \$865K budget
<p><u>General Counsel/ Advisory Support</u></p> <ul style="list-style-type: none"> ▪ Wraparound General Counsel Service - - All County Departments ▪ Drafting Legislation/Regulations – All County Departments ▪ Advice on County Operations/Policies – All County Departments 	<ul style="list-style-type: none"> ▪ 8.0WY ▪ \$909K budget
<p><u>Internal Support</u> – County Attorney</p>	<ul style="list-style-type: none"> ▪ 5.0 WY ▪ \$775K budget

Office of the County Attorney At-A-Glance

What OCA Does and for Whom	How Much*
<p><u>Litigation</u></p> <ul style="list-style-type: none"> ▪ Represent the Self-Insurance Fund - Liability Cases and Worker's Compensation ▪ Commercial Litigation - All County Departments ▪ Personnel and Human Resources Including Litigation and Collective Bargaining – OHR and all County Departments ▪ Non-personnel Administrative Litigation – All County Departments ▪ Child Welfare Litigation – Department of Health and Human Services ▪ Public Interest (Affirmative) Litigation <ul style="list-style-type: none"> – Code Enforcement – DHCA, DED, DFRS, DPS, PD – Debt Collection – Department of Finance – Forfeiture – Police Department – Subrogation – Risk Management – Other Affirmative Litigation – Multiple Departments 	<ul style="list-style-type: none"> ▪ 19.0 WY \$2.6M budget ▪ 1.25 WY \$200K budget ▪ 8.0 WY \$1.11M budget ▪ 0.4 WY \$61K budget ▪ 9.0 WY \$1M budget ▪ 9.55 WY \$1.25M budget

* *Approximate values, incl. charge-backs*

Organizational Structure



74 positions, 40.3 WYs (non-charge-back)

Proposed Headline Measures

Economic outcomes

1. Self-insurance fund litigation – Positive ration of litigation cases won versus loss; Plaintiff's last demand exceeds final amount paid by the County.
2. Worker's compensation – Positive gain/loss ratio from split between County adjustment and claimant's adjustment.
3. Debt collection, code enforcement, subrogation, and forfeiture – Ratio between amount collected and amount originally owed; and average cost of collection is less than 3%.

Litigation outcomes

4. Percent of child welfare litigation: TPR and CINA cases with a positive outcome.
5. Positive ratio of appeals won
6. Positive ratio of Code Enforcement litigation won.

Customer satisfaction

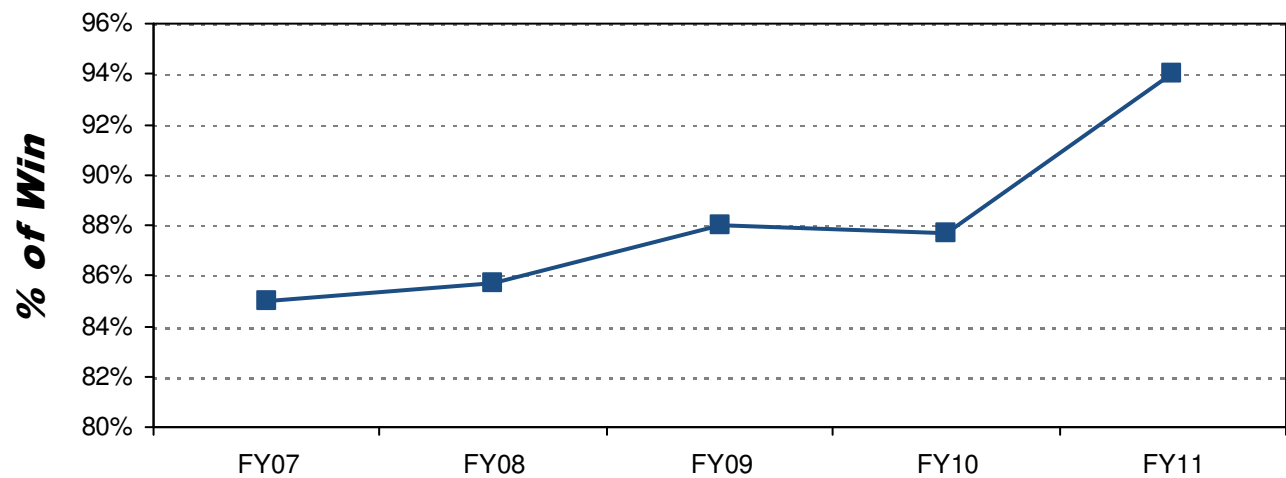
7. Above average rating from Internal Customer Satisfaction Survey.

Measure 1a: Self-Insurance Litigation – Win/Loss Ratio

Resolution in County's favor vs. Resolution in plaintiff's favor

Resolution	FY07	FY08	FY09	FY10	FY11
Win	51	48	44	64	104
Loss	9	8	6	9	7

Win/Loss Ratio



Measure 1b: Self-Insurance Litigation Settlement demanded and actual paid

	FY07	FY08	FY09	FY10	FY11
Last settlement demanded by the plaintiff	\$157,456,145	\$526,357,993	\$17,237,854	\$87,539,319	\$205,938,308.2
Total paid to plaintiff by the County	\$6,261,531*	\$1,636,309	\$814,139	\$258,117	\$1,585,412**
Ratio – Amount paid by the County versus Amount demanded by the plaintiffs	3.98%	0.31%	4.72%	0.29%	0.77%
# Settlements	41	40	36	21	33
# Judgment paid	9	8	6	9	7
Judgment in County's favor	51	48	44	64	104 ¹

** This aberrationally high settlement amount corresponds to a single civil rights case (in which Local Government Tort Liability limits do not apply) where the settlement was for several million dollars.*

*** This high judgment amount is due to an interpleader action involving a Ride-on bus accident which has approximately 40 claimants/plaintiffs. This action was considered as one judgment.*

¹ This number has increased dramatically based on two reasons - less settlements in cases and more favorable outcomes on those cases that were not settled, and an increase in the number of cases handled during the reporting period.

Measure 2: Worker's Compensation

Worker's Compensation Caseload and Net Gain

Workers Comp	FY07	FY08	FY09	FY10	FY11
WC Hearings	2,054	2,228	2,284	1,960	1,807*
Stipulations Net Gain to the County	-	\$164,843.5	\$126,037.5	\$156,517.7	\$115,839.0
Award Net Gain to the County ²	-	\$863,809.54	\$2,015,791.7	\$994,733.3	\$1,682,501.0
Total Net Gain to the County ²	-	\$1,028,653.04	\$2,141,829.20	\$1,151,251.00	\$1,798,340.00

*As of July 1, 2010, Maryland Park and Planning Commission workers compensation cases were not handled by OCA. Any injuries that arose after July 1, 2010 to City of Rockville and City of Takoma Park employees are not handled by OCA.

² The Maryland Workers' Compensation Commission ("Commission") issues awards on the nature and extent of an employee's job related injuries. In assessing the amount of the award, the Commission evaluates, among other things, the independent medical evaluations (IME) from both the injured worker's physician and the employer/insurer's physician. Each IME doctor rates the employee using a percentage of disability. Usually, the injured worker's rating is higher than the employer/insurer's rating. The Commission's award is typically a number between the employee's and employer/insurer's evaluation. This measurement assumes that the Commission generally will make an award that is an even split between the ratings. In this case, this measurement concludes that the County has experienced neither a gain nor loss. For example, where the employee's expert assesses a 10% rating, the County has a 5% rating, and the Commission awards a rating at 7.5%, there is no gain or loss to the County. When, however, the Commission award is above an even split of the ratings, the County assesses that as a loss to the County. When the Commission award is below the split of the ratings, the County assesses that as a gain to the County. For example, if the ratings in a case are 10% to an injured worker's back (equates to \$15,350.00) as assessed by the injured workers' physician and 0% to the back (\$0.00) as assessed by the County's physician and the Commission awards a 3% disability (\$4,605.00), the County receives a gain of \$3,070.00 (the split of the ratings is 5% (\$7,675.00)).

When the parties agree on the amount of an award, that agreement is called a stipulation. The value of the gain or loss of the stipulation is calculated as a loss or gain to the County in the same manner as the Commission award is calculated.

In the chart above, all numbers are net figures in that the total losses for the year have been deducted from the total gains for the year.

Measure 3: Debt Collection, Subrogation, Code Enforcement, Forfeitures – Ratio between Amount Collected and Amount Originally Owed

- OCA will track how much is either owed or demanded in each of debt collection, subrogation, code enforcement and forfeitures, and how much is actually collected.
- OCA will track the ratio of cost to operate the Debt Collection Unit against the amount collected.

	FY07	FY08	FY09	FY10	FY11
Debt Collected	\$8,161,451	\$23,799,532	\$43,016,983	\$14,052,713.9	\$15,352,129.53
Subrogation collected	\$133,091	\$88,165	\$104,198	\$92,364	\$74,027.82
Code Enforcement collected	\$580,961	\$399,451	\$708,523	\$714,143.7	\$704,342.23
Forfeitures collected	\$0	\$45,825	\$94,440	\$223,247.2	\$71,318.05
Total Collected	\$8,875,504	\$24,332,972	\$43,924,144	\$15,082,468.8	\$16,201,817.63
Total Referred	\$7,067,335	\$16,567,683	\$36,595,589	\$13,053,665	\$13,265,092
Ratio – Collected/Original Owed	125.6%	146.9%	120%	115.5%	122.1%
Costs of collection	\$428,144	\$331,440	\$458,743	\$421,203	\$420,000³
Ratio – Costs/Collection	4.8%	1.36%	1.04%	2.8%	2.6%

³ This is an estimate based on FY10 costs. Due to migration from FAMIS to the new ERP system, the collection index codes have changed.

Measures 1, 2, and 3: Economic Outcomes

What constitutes good performance for these measures?

- Without compromising the County's responsibility and commitment to appropriately compensate those who are injured, and to adhere to the law in its affirmative litigation practices, County Attorney litigation activities will display a stable or downward trend in defensive litigation and a stable or upward trend in affirmative litigation areas

Contributing Factors

- OCA hires and retains high-quality attorneys
- OCA provides on-going training to attorneys
- OCA coordinates closely with client departments
- OCA's approach to settlement avoids costs of litigation and bad outcome risks
- Very experienced and efficient Debt Collection Unit
- OCA attorneys are highly respected in bench and bar

Restricting Factors

- Code Enforcement – heavy caseload
- Worker's Compensation Issues
 - Legislative presumptions increase compensation
 - Fraud
 - Procedural rules and practices that may disadvantage County in litigation

Improvement Strategies

- Worker's Compensation – Legislative strategy will focus on opportunities to improve procedural conditions before the Worker's Compensation Commission.

Measure 4: Workload and Performance of child welfare litigation

Action – Child Welfare Services/ Juvenile Court	FY07	FY08	FY09	FY10	FY11
Number of Children in Need of Assistance (CINA) or Guardianship Hearings	1,712	2,284	2,617	2,418	2,546
Number of New CINA Petitions Filed	276	255	305	210	214
Number of CINA Cases Closed	267	234	278	275	216
Number of New Termination of Parental Rights (TPR) Petitions Filed	44	59	46	60	38
Number of TPRs Granted	16	71	30	53	25
Number of New Adoption Petitions Filed	23	16	57	43	43
Number of Adoptions Granted	21	22	57	34	47
Petitions for TPR or CINA adjudicated	-	51*	133	163	216
Petitions for TPR or CINA Granted	-	51*	132	163	203
Petitions for TPR or CINA Denied	-	0	1	0	4
Petitions for Guardianship still pending trials	-	0	0	0	9
Percentage of Guardianship Petitions Timely Resolved**	54.55%	81.36%	86.96%	91.67%	94.74%
Ratio of TPR/CINA adjudicated Granted/Denied	-	100%	99.24%	100%	98.07%

*TPR only. Start tracking CINA adjudication disposition in FY09

**Family Law §5-319 (180-day deadline from filing of Petition for Guardianship)

What constitutes good performance for this measure?

- All TPR/CINA Petitions will be granted.
- All TPR/Guardianship Petitions will be timely resolved.

Contributing Factors

- High-quality OCA staff and high-quality corps of contract attorneys
- Diligence in achieving timely service in Guardianship proceedings
- Excellent coordination with client agency
- OCA attorneys highly-respected by bench and bar

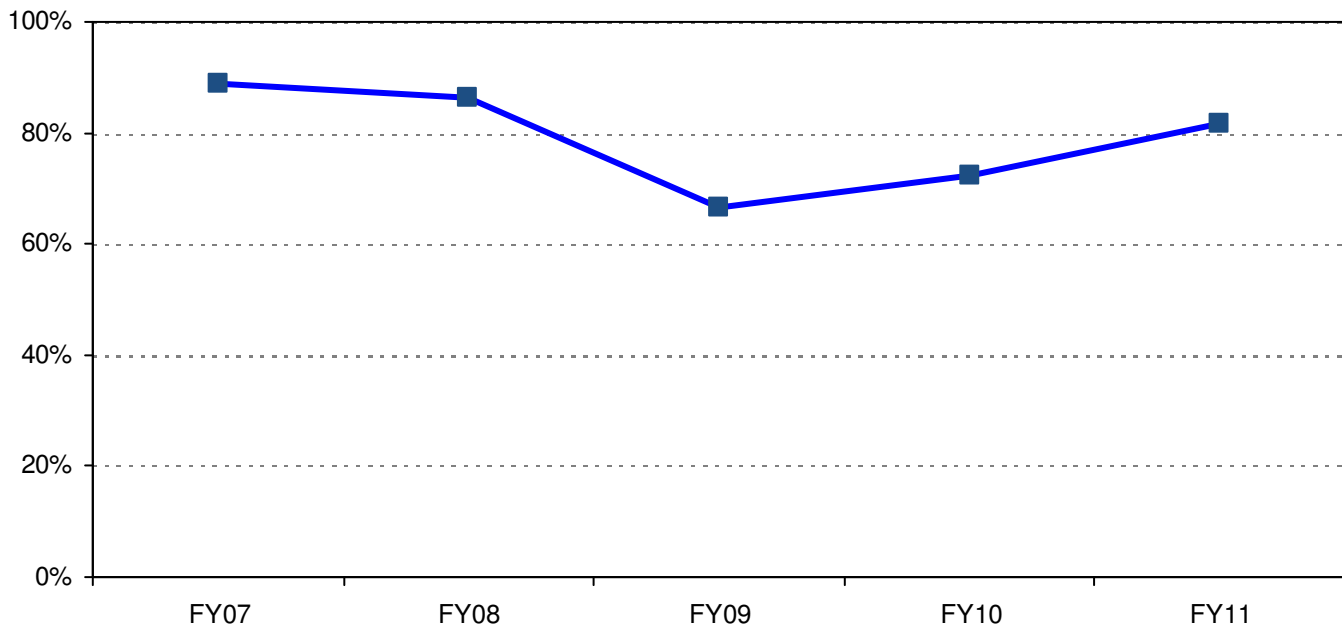
Restricting Factors

- OCA lawyers assigned to Child Welfare case also handle HHS general counsel matters, placing considerable pressure on our ability to handle both missions.
- Growing caseload in difficult economic times may challenge OCA's ability to maintain its high-level of litigation success in this area

Improvement Strategies

- Faster resolution – Overall litigation strategy will focus on bringing finality to matters more expeditiously. Continuing to improve compliance with statutory deadlines for resolution through diligent service efforts.
- One judge/one family – Advocacy strategy will continue to focus on one-judge/one-family approach.

Measure 5: Percent of Judicial Appeals Won



	FY07	FY08	FY09	FY10	FY11
Appeals won	16	19	8	13	22
Appeals lost	2	3	4	5	5

What constitutes good performance for this measure?

OCA have a high measure of success in appeals, which evidences sound legal advice and positions taken during trial

Contributing Factors

- High-level of experience among attorneys at all levels of practice
- Legal positions are carefully researched and thought through
- OCA lawyers highly respected by bench and bar

Restricting Factors

- Areas of legal uncertainty

Measure 6: Code Enforcement – Win/Loss Ratio

	FY07	FY08	FY09	FY10	FY11
Win	0	1,858*	2,338	2,583	1,848
Loss	0	15*	41	75	66
Ratio of Win versus Loss	0	99.20%	98.28%	97.18%	96.55%

What constitutes good performance for this measure?

- OCA produces a high level of success due to preparation for trial with code inspectors and officers, communications of code enforcement goals with enforcing departments, on-going training of the inspectors and officers by OCA and finally coherent presentation before the District Court.

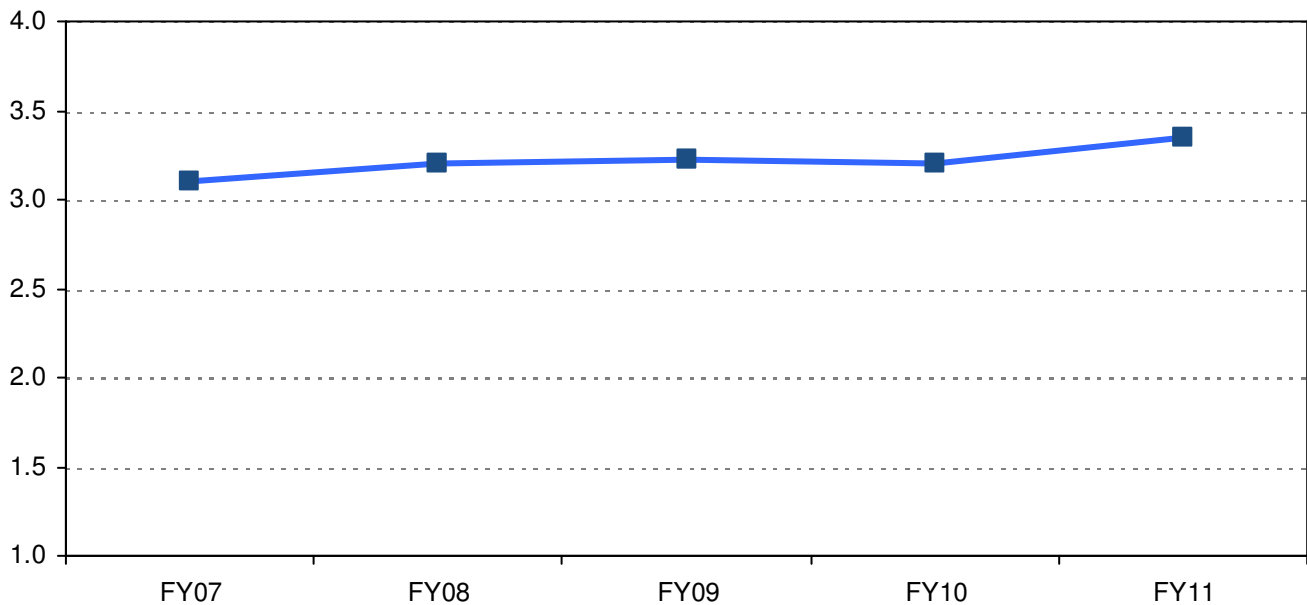
Contributing Factors

- Proper field preparation by inspectors and officers enforcing the County Code influences outcome determination of these cases. Solid understanding built upon training and field management of enforcement staff and communication by enforcement staff with the attorneys who prosecute these violations. Continuing training of attorneys and enforcement staff is essential to success

Restricting Factors

- Training is restricted by the available time to contribute to the task. Experience of the enforcement staff and retention of this staff affects the outcomes of code cases. Variability of judges who hear code cases can also affect outcomes in both positive and negative ways

Measure 7a: Average Rating from Internal Customer Satisfaction Survey



In 2010, the County Attorney's Office showed significant improvements in the all areas of the personnel ratings.

Measure 7b: Average Rating from Internal Customer Satisfaction Survey as to Timeliness

Average rating for Question 11: Timeliness	2007	2008	2009	2010
Office of the County Attorney	3.05	3.22	3.20	3.35
Average across departments	2.85	2.99	2.98	2.94

Measure 7: Average Rating from Internal Customer Satisfaction Survey

What constitutes good performance for this measure?

- A high proportion of internal clients will rate their satisfaction with our responsiveness and the quality of our legal work product at the level of “very satisfied.”

Contributing Factors

- OCA has a strongly-embedded culture of responsiveness and client support
- Responsiveness to clients is viewed as an important performance measure by OCA supervisors
- Senior managers are also involved in facilitating the client relationship
- General counsel plan seeks to further strengthen client relationships
- Many of our internal clients understand the role of the lawyer and the importance of risk minimization and accept the importance of our mission
- Timeliness of service is given significant weight in performance evaluations
- OCA management will intervene where timeliness issues arise
- High-level of professionalism and commitment from OCA staff at all levels.
- Internal clients generally understand our process

Measure 7. Average Rating from Internal Customer Satisfaction Survey

Restricting Factors

- Isolated pockets of bad customer service
 - Failure to return telephone calls
 - Inadequate explanation of legal positions
 - Failure to offer alternatives
- Isolated pockets of inadequate preparation
 - Legal advice based on impression of the law rather than understanding of the law
- Lawyer client communication failures
- Inadequate understanding of OCA's role and the importance of preventing financial risk and non-compliance with the law
- Diminishing budgets mean inability to grow legal staff as caseloads continue to grow
- Occasional failure to keep client informed leads to perception of untimeliness
- Crushing caseloads

Improvement Strategies

- Continue to focus on training and education of both attorneys and clients in the legal and operational issues that arise in our work
- Increase proactive attention to the quality of client relationships through regular consultation